

Filed 9/27/05 by Clerk of Supreme Court
IN THE SUPREME COURT
STATE OF NORTH DAKOTA

2005 ND 164

Matthew Eagleman,

Petitioner and Appellant

v.

State of North Dakota,

Respondent and Appellee

No. 20040359

Appeal from the District Court of Ramsey County, Northeast Judicial District,
the Honorable Donovan John Foughty, Judge.

AFFIRMED.

Per Curiam.

Matthew Eagleman, pro se, James River Correctional Center, 2521 Circle
Drive, Jamestown, N.D. 58401, petitioner and appellant; submitted on brief.

Lonnie Olson (argued), State's Attorney, 524 4th Avenue NE, Unit 16, Devils
Lake, N.D. 58301, for respondent and appellee.

Eagleman v. State

No. 20040359

Per Curiam.

[¶1] Matthew Eagleman appeals from the district court's order denying his application for post-conviction relief. Eagleman argues he was denied effective assistance of counsel, he has evidence that has not previously been heard, and he was coerced into withdrawing an earlier application for post-conviction relief.

[¶2] Eagleman first applied for post-conviction relief in 2003. During an April 27, 2004, evidentiary hearing, Eagleman withdrew the application. On August 9, 2004, Eagleman again applied for post-conviction relief, raising substantially the same issues he raised in his initial application. The district court denied that application on August 16, 2004. Eagleman did not appeal. On November 9, 2004, Eagleman again applied for post-conviction relief. In this application, Eagleman again raises substantially the same issues, adding only a claim that his evidentiary hearing counsel was ineffective. This claim should have been raised in his August 9, 2004, application. On December 1, 2004, the district court denied the application. Eagleman appeals.

[¶3] Eagleman's claims represent a misuse of process under N.D.C.C. § 29-32.1-12. See Jensen v. State, 2004 ND 200, 688 N.W.2d 374 (holding a misuse of process occurs if the applicant presents a claim for relief the applicant inexcusably failed to raise in prior proceedings, or if the applicant files multiple applications containing a claim that was fully and finally determined in a previous proceeding). We summarily affirm under N.D.R.App.P. 35.1(a)(7).

[¶4] Gerald W. VandeWalle, C.J.
Mary Muehlen Maring
Daniel J. Crothers
Dale V. Sandstrom
Carol Ronning Kapsner